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THE DIOCESE OF BUFFALO, N.Y.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

DAVID HUSTED, JR., an
individual,

Plaintiff,

vs.

ROMAN CATHOLIC CHURCH IN
THE STATE OF HAWAII, A.K.A.
THE ROMAN CATHOLIC DIOCESE
OF HONOLULU; THE DIOCESE OF
BUFFALO, N.Y.,; SOUTHERN TIER
CATHOLIC SCHOOL ARCHBISHOP
WALSH ACADEMY; THE
SOUTHDOWN INSTITUTE; JAMES
A. SPIELMAN; and DOE
DEFENDANTS 1-10,

Defendants.

Civil No. CV14-00192 SOM BMK

DEFENDANT THE DIOCESE OF
BUFFALO, N.Y.'S ANSWER TO
COMPLAINT FILED APRIL 22,
2014; CERTIFICATE OF SERVICE

**DEFENDANT THE DIOCESE OF BUFFALO, N.Y.'S
ANSWER TO COMPLAINT FILED APRIL 21, 2014**

Defendant The Diocese of Buffalo, N.Y. (hereinafter “Diocese of Buffalo”), answers the Complaint filed on April 22, 2014, as follows:

FIRST DEFENSE

1. The Complaint fails to state a claim against Defendant Diocese of Buffalo upon which the relief sought can be granted.

SECOND DEFENSE

PARTIES

2. Defendant Diocese of Buffalo is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraphs 1 and 2 of the Complaint.

3. In response to the allegations in paragraph 2.1 of the Complaint, Defendant Diocese of Buffalo admits that it is a not-for-profit corporation formed under the laws of New York and is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 2.1.

4. Defendant Diocese of Buffalo is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraphs 2.2, 2.3, 2.4 and 2.5 of the Complaint.

5. Defendant Diocese of Buffalo is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 3.

6. In response to paragraph 4, Defendant Diocese of Buffalo admits that Father James Spielman was a priest of the Diocese of Buffalo at one point in time and is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 4 of the Complaint.

7. Defendant Diocese of Buffalo denies the allegations in paragraph 5 of the Complaint as they relate to Diocese of Buffalo and is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 5.

8. Defendant Diocese of Buffalo is without information sufficient to form a belief as to the truth of the allegations in paragraph 6.

9. Defendant Diocese of Buffalo is without information to form a belief as to the truth of the allegations that Fr. Spielman molested and abused minor students. Defendant Diocese of Buffalo denies the allegations that Diocese of Buffalo was aware of, had notice of, and should have known of molestations and sexual abuse, and Diocese of Buffalo denies the remaining allegations in paragraph 7.

10. Defendant Diocese of Buffalo denies the allegations in paragraphs 8 and 9 of the Complaint.

JURISDICTION AND VENUE

11. Defendant Diocese of Buffalo admits that it is a citizen of New York, is without information to admit or deny the citizenship of the other parties, denies that jurisdiction and venue are proper, and denies the remaining allegations in paragraphs 10 and 11 of the Complaint.

FACTUAL ALLEGATIONS APPLICABLE TO ALL COUNTS

12. Defendant Diocese of Buffalo denies the allegations in paragraph 12 of the Complaint as they relate to Diocese of

Buffalo and is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 12.

13. In response to the allegations in paragraph 13, Defendant Diocese of Buffalo admits that Fr. Spielman was ordained as a priest and is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 13.

14. Defendant Diocese of Buffalo is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraphs 13A and 13B.

15. In response to the allegations in paragraph 13C, Defendant Diocese of Buffalo admits that Fr. Spielman was ordained as a priest in the Diocese of Buffalo in 1970.

16. Defendant Diocese of Buffalo denies the allegations in paragraph 13D.

17. Defendant Diocese of Buffalo is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraphs 13E, 13F, 13G, 13H, and 13I.

18. In response to allegations in paragraph 13J, Defendant Diocese of Buffalo admits that Fr. Spielman ceased serving as a priest of the Diocese of Buffalo in 1993 and is without information or knowledge sufficient to form a belief as to the remaining allegations in paragraph 13J.

19. Defendant Diocese of Buffalo denies the allegations in paragraphs 14 and 15 of the Complaint as they relate to Diocese of Buffalo.

20. In response to paragraph 16 of the Complaint, Defendant Diocese of Buffalo is without information to admit or deny that Fr. Spielman molested Plaintiff, parishioners and/or students or the location of any of the alleged incidents. Defendant Diocese of Buffalo denies the allegations that Defendants were aware of, had notice of, or should have known, of the molestation and denies the remaining allegations.

21. Defendant Diocese of Buffalo is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraphs 16 A, B, C, D and E of the Complaint.

22. Defendant Diocese of Buffalo denies the allegations in paragraph 16F that Sister Neil McDonald was an agent and/or employee of Defendants and is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 16F.

23. Defendant Diocese of Buffalo denies the allegations in paragraph 16G and H.

24. Defendant Diocese of Buffalo is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraphs 16I, and J of the Complaint.

25. Defendant Diocese of Buffalo denies the allegations in paragraph 17 of the Complaint.

**FIRST CAUSE OF ACTION
(Offensive Physical Contact/Childhood Sexual Assault)
(Against All Defendants)**

26. In response to paragraph 18 of the Complaint, Defendant Diocese of Buffalo repeats and incorporates by reference its responses to paragraphs 1 through 17 above.

27. Defendant Diocese of Buffalo is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 19 that from approximately 1979 through approximately 1982, Fr. Spielman engaged in sexual contact upon Plaintiff, denies that the actions were within the course of scope of employment and/or duties, denies any ratification and denies the remaining allegations in paragraph 19 of the Complaint.

28. Defendant Diocese of Buffalo denies the allegations in paragraphs 20 and 21 of the Complaint as they relate to Diocese of Buffalo.

**SECOND CAUSE OF ACTION
(Imminent Battery)
(Against All Defendants)**

29. In response to paragraph 22 of the Complaint, Defendant Diocese of Buffalo repeats and incorporates by reference its responses to paragraphs 1 through 21 above.

30. Defendant Diocese of Buffalo is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 23 that from approximately 1979 through approximately 1982, Fr. Spielman engaged in sexual contact upon

Plaintiff, denies that the conduct was within the course of scope of employment and/or duties, denies any ratification and denies the remaining allegations in paragraph 23 of the Complaint.

31. Defendant Diocese of Buffalo denies the allegations in paragraphs 24 and 25 of the Complaint as they relate to Diocese of Buffalo.

**THIRD CAUSE OF ACTION
(Gross Negligence)
(Against All Defendants)**

32. In response to paragraph 26 of the Complaint, Defendant Diocese of Buffalo repeats and incorporates by reference its responses to paragraphs 1 through 25 above.

33. Defendant Diocese of Buffalo denies the allegations in paragraphs 27, 28, 29, 30, 31, 32, and 33 of the Complaint as they relate to Diocese of Buffalo.

**FOURTH CAUSE OF ACTION
(Negligent Supervision/Failure to Warn)
(Against All Defendants)**

34. In response to paragraph 34 of the Complaint, Defendant Diocese of Buffalo repeats and incorporates by reference its responses to paragraphs 1 through 33 above.

35. Defendant Diocese of Buffalo denies the allegations in paragraphs 35, 36, and 37 of the Complaint as they relate to Diocese of Buffalo.

**FIFTH CAUSE OF ACTION
(Negligent Hiring/Retention)
(Against All Defendants)**

36. In response to paragraph 38 of the Complaint, Defendant Diocese of Buffalo repeats and incorporates by reference its responses to paragraphs 1 through 37 above.

37. Defendant Diocese of Buffalo denies the allegations in paragraphs 39, 40, and 41 of the Complaint as they relate to Diocese of Buffalo.

**SIXTH CAUSE OF ACTION
(Fraud)
(Against All Defendants)**

38. In response to paragraph 42 of the Complaint, Defendant Diocese of Buffalo repeats and incorporates by reference its responses to paragraphs 1 through 41 above.

39. Defendant Diocese of Buffalo denies the allegations in paragraphs 43, 44, 45, 46, 47, 48, 49, 50, and 51 of the Complaint as they relate to Diocese of Buffalo.

SEVENTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)
(Against All Defendants)

40. In response to paragraph 52 of the Complaint, Defendant Diocese of Buffalo repeats and incorporates by reference its responses to paragraphs 1 through 51 above.

41. Defendant Diocese of Buffalo denies the allegations in paragraphs 53, 54, 55, 56, and 57 of the Complaint as they relate to Diocese of Buffalo.

EIGHTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)
(Against All Defendants)

42. In response to paragraph 58 of the Complaint, Defendant Diocese of Buffalo repeats and incorporates by reference its responses to paragraphs 1 through 57 above.

43. Defendant Diocese of Buffalo denies the allegations in paragraphs 59, 60, 61, 62 of the Complaint as they relate to Diocese of Buffalo.

NINTH CAUSE OF ACTION
(Premises Liability)
(Against All Defendants)

44. In response to paragraph 63 of the Complaint, Defendant Diocese of Buffalo repeats and incorporates by reference its responses to paragraphs 1 through 62 above.

45. Defendant Diocese of Buffalo denies the allegations in paragraphs 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, and 75 of the Complaint as they relate to Diocese of Buffalo.

TENTH CAUSE OF ACTION
(Punitive Damages)
(Against All Defendants)

46. In response to paragraph 76 of the Complaint, Defendant Diocese of Buffalo repeats and incorporates by reference its responses to paragraphs 1 through 75 above.

47. Defendant Diocese of Buffalo denies the allegations in paragraph 77 of the Complaint as they relate to Diocese of Buffalo.

GENERAL DENIAL

48. Any allegation in the Complaint which has not been specifically addressed above is denied.

AFFIRMATIVE DEFENSES

A. The claims for relief in Plaintiff's Complaint are barred by the defense of contributory and/or comparative negligence.

B. The claims for relief in Plaintiff's Complaint are barred by the defense of assumption of risk.

C. Plaintiff's claims are barred by the statute of limitations and/or laches.

D. Plaintiff's claims are barred by the principles of estoppel and waiver and consent.

E. Plaintiff's claims are barred or limited by the applicable provisions of Hawaii Revised Statutes, Chapter 663.

F. Any injury or damage suffered by Plaintiff resulted from the conduct of others over whom Defendant had no control and for whom it is not vicariously liable.

G. Plaintiff has failed to mitigate his damages, if any.

H. Plaintiff's claims are barred by the provisions of the First Amendment to the U.S. Constitution and Section 4 of the Constitution of Hawaii and principles of ecclesiastical abstention.

I. The Complaint violates Rule 9 (b) and (g) of the Federal Rules of Civil Procedure.

J. The Court lacks personal jurisdiction over The Diocese of Buffalo.

K. Venue is improper.

WHEREFORE, Defendant Diocese of Buffalo prays that:

A. The Complaint against it be dismissed with prejudice and that it be awarded attorneys' fees and costs; and

B. That it have such other and further relief as this Court deems just and equitable.

DATED: Honolulu, Hawaii, September 4, 2014.

 /s/ David Y. Suzuki
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JOHN BURKE
DAVID Y. SUZUKI
STEVEN E. TOM
Attorneys for Defendant
THE DIOCESE OF BUFFALO,
N.Y.